

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JOHN C. STANDLEY,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting  
Commissioner of Social Security,

Defendant.

Case No. 3:15-cv-05590-KLS

ORDER REVERSING AND  
REMANDING DEFENDANT'S  
DECISION TO DENY BENEFITS

Plaintiff has brought this matter for judicial review of defendant's denial of his application for disability insurance benefits. The parties have consented to have this matter heard by the undersigned Magistrate Judge. 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73; Local Rule MJR 13. For the reasons set forth below, the Court finds that defendant's decision to deny benefits should be reversed, and that this matter should be remanded for further administrative proceedings.

FACTUAL AND PROCEDURAL HISTORY

On June 15, 2004, plaintiff filed an application for disability insurance benefits alleging he became disabled beginning May 23, 2003. Dkt. 13-14, Administrative Record (AR), 18. That application was denied on initial administrative review and on reconsideration. *Id.* At a hearing held before an Administrative Law Judge (ALJ) plaintiff appeared and testified, as did a medical

1 expert and a vocational expert. AR 740-84.

2 In a decision dated January 16, 2008, the ALJ found plaintiff could perform his past  
3 relevant work and therefore was not disabled. AR 18-26. Plaintiff appealed that decision to this  
4 Court, which remanded the matter for further administrative proceedings. AR 820-36.

5 A second hearing was held before a different ALJ on remand, at which plaintiff appeared  
6 and testified as did a different vocational expert. AR 1079-1132. In a decision dated October 4,  
7 2012, that ALJ also found plaintiff could perform his past relevant work and therefore was  
8 disabled. AR 798-812. It does not appear that the Appeals Council assumed jurisdiction of this  
9 case, making the ALJ's decision the Commissioner's final decision, which plaintiff appealed to  
10 this Court. 20 C.F.R. § 404.984; Dkt. 1.

11  
12 Plaintiff seeks reversal of the ALJ's decision and remand for an award of benefits, or in  
13 the alternative for further administrative proceedings, arguing the ALJ erred:

- 14  
15 (1) in evaluating the medical evidence in the record, including that from  
16 Armon Toomajian, M.D., Ryan Chew, M.D., Deborah L. Chaquette,  
17 ARNP, Diana Shearer, M.D., and Christy Ulleland, M.D.;
- 18 (2) in discounting plaintiff's credibility;
- 19 (3) in evaluating the lay witness evidence from plaintiff's landlady and  
20 plaintiff's wife;
- 21 (4) in assessing plaintiff's residual functional capacity (RFC); and
- 22 (5) in finding plaintiff could perform her past relevant work.

23 For the reasons set forth below, the Court agrees the ALJ erred in evaluating the opinions of Drs.  
24 Toomajian and Chew, as well as the lay witness evidence from both plaintiff's landlady and  
25 plaintiff's wife – and thus in assessing plaintiff's RFC and in determining that he could perform  
26 his past relevant work – but finds remand for further administrative proceedings, rather than an  
award of benefits, is warranted.

## DISCUSSION

The Commissioner's determination that a claimant is not disabled must be upheld if the "proper legal standards" have been applied, and the "substantial evidence in the record as a whole supports" that determination. *Hoffman v. Heckler*, 785 F.2d 1423, 1425 (9th Cir. 1986); *see also Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004); *Carr v. Sullivan*, 772 F.Supp. 522, 525 (E.D. Wash. 1991). "A decision supported by substantial evidence nevertheless will be set aside if the proper legal standards were not applied in weighing the evidence and making the decision." *Carr*, 772 F.Supp. at 525 (citing *Browner v. Sec'y of Health and Human Servs.*, 839 F.2d 432, 433 (9th Cir. 1987)). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (citation omitted); *see also Batson*, 359 F.3d at 1193.

The Commissioner's findings will be upheld "if supported by inferences reasonably drawn from the record." *Batson*, 359 F.3d at 1193. Substantial evidence requires the Court to determine whether the Commissioner's determination is "supported by more than a scintilla of evidence, although less than a preponderance of the evidence is required." *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975). "If the evidence admits of more than one rational interpretation," that decision must be upheld. *Allen v. Heckler*, 749 F.2d 577, 579 (9th Cir. 1984). That is, "[w]here there is conflicting evidence sufficient to support either outcome," the Court "must affirm the decision actually made." *Allen*, 749 F.2d at 579 (quoting *Rhinehart v. Finch*, 438 F.2d 920, 921 (9th Cir. 1971)).

### I. The ALJ's Evaluation of the Medical Evidence

The ALJ is responsible for determining credibility and resolving ambiguities and

1 conflicts in the medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9th Cir. 1998). Where  
2 the evidence is inconclusive, “questions of credibility and resolution of conflicts are functions  
3 solely of the [ALJ].” *Sample v. Schweiker*, 694 F.2d 639, 642 (9th Cir. 1982). In such situations,  
4 “the ALJ’s conclusion must be upheld.” *Morgan v. Comm’r of the Soc. Sec. Admin.*, 169 F.3d  
5 595, 601 (9th Cir. 1999). Determining whether inconsistencies in the evidence “are material (or  
6 are in fact inconsistencies at all) and whether certain factors are relevant to discount” medical  
7 opinions “falls within this responsibility.” *Id.* at 603.

9 In resolving questions of credibility and conflicts in the evidence, an ALJ’s findings  
10 “must be supported by specific, cogent reasons.” *Reddick*, 157 F.3d at 725. The ALJ can do this  
11 “by setting out a detailed and thorough summary of the facts and conflicting clinical evidence,  
12 stating his interpretation thereof, and making findings.” *Id.* The ALJ also may draw inferences  
13 “logically flowing from the evidence.” *Sample*, 694 F.2d at 642. Further, the Court itself may  
14 draw “specific and legitimate inferences from the ALJ’s opinion.” *Magallanes v. Bowen*, 881  
15 F.2d 747, 755, (9th Cir. 1989).

17 The ALJ must provide “clear and convincing” reasons for rejecting the uncontradicted  
18 opinion of either a treating or examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.  
19 1996). Even when a treating or examining physician’s opinion is contradicted, that opinion “can  
20 only be rejected for specific and legitimate reasons that are supported by substantial evidence in  
21 the record.” *Id.* at 830-31. However, the ALJ “need not discuss *all* evidence presented” to him or  
22 her. *Vincent on Behalf of Vincent v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984) (citation  
23 omitted) (emphasis in original). The ALJ must only explain why “significant probative evidence  
24 has been rejected.” *Id.*; *see also Cotter v. Harris*, 642 F.2d 700, 706-07 (3rd Cir. 1981); *Garfield*  
25 *v. Schweiker*, 732 F.2d 605, 610 (7th Cir. 1984).

1 In general, more weight is given to a treating physician's opinion than to the opinions of  
2 those who do not treat the claimant. *See Lester*, 81 F.3d at 830. On the other hand, an ALJ need  
3 not accept the opinion of a treating physician, "if that opinion is brief, conclusory, and  
4 inadequately supported by clinical findings" or "by the record as a whole." *Batson v. Comm'r of*  
5 *Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir. 2004); *see also Thomas v. Barnhart*, 278 F.3d  
6 947, 957 (9th Cir. 2002); *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001). An  
7 examining physician's opinion is "entitled to greater weight than the opinion of a nonexamining  
8 physician." *Lester*, 81 F.3d at 830-31. A non-examining physician's opinion may constitute  
9 substantial evidence if "it is consistent with other independent evidence in the record." *Id.* at  
10 830-31; *Tonapetyan*, 242 F.3d at 1149.

12 A. Dr. Toomajian

13 At the first hearing, Dr. Toomajian testified that the heart and chest pain plaintiff reported  
14 experiencing "[s]ure can" cause fatigue, and that it would contribute to him feeling "pretty worn  
15 out" and needing to take a nap by the afternoon. AR 777-78. Accordingly, Dr. Toomajian found  
16 plaintiff's complaints of fatigue to be credible. AR 778. The ALJ addressed Dr. Toomajian's  
17 testimony as follows:

19 Medical Expert, Armon Toomajian, M.D., a board certified internist and  
20 specialist in the field of rheumatology reviewed the claimant's medical  
21 records and testified that the claimant could lift 10 pounds frequently, sit for 6  
22 hours in an 8 hour workday, stand or walk for 3-4 hours out of an 8 hour  
23 workday. I give significant weight to Dr. Toomajian's opinion because it is  
24 based on a thorough review of the medical record and is consistent with the  
overall objective evidence of record. However, in light of the claimant's left  
shoulder tendinopathy, complaints of back pain and numbness in his hands I  
incorporated additional postural and manipulative limitations.

25 AR 810.

26 Plaintiff argues the ALJ erred here because while the ALJ stated he gave Dr. Toomajian's

1 opinion great weight, he did not mention plaintiff's fatigue or need to nap in his RFC assessment.  
2 The Court agrees. Defendant argues no error occurred, since Dr. Toomajian did not provide any  
3 opinion regarding the extent and frequency of plaintiff's fatigue or need to take naps, or whether  
4 these symptoms imposed significant limitations on plaintiff's ability to work and function. The  
5 ALJ, however, has the duty "to fully and fairly develop the record and to assure that the  
6 claimant's interests are considered." *Tonapetyan v. Halter*, 242 F.3d 1144, 1150 (9th Cir. 2001)  
7 (citations omitted). Dr. Toomajian's belief that plaintiff's complaints of fatigue were credible  
8 should have put the ALJ on notice that those symptoms could have a significant impact on  
9 plaintiff's ability to perform work-related tasks, particularly given his reported need to nap. The  
10 ALJ's failure to investigate that issue further was error.

12 B. Dr. Chew

13 In early October 2004, plaintiff was examined by Dr. Chew, who recommended that he  
14 use an assistive device "for short and long distances as well as uneven terrain." AR 302. The  
15 ALJ stated he gave "significant weight" to this portion of Dr. Chew's opinion (AR 810), and  
16 included the need to use a cane "**for ambulation beyond one city block**" in his assessment of  
17 plaintiff's RFC (AR 804 (emphasis in the original)). Plaintiff argues this limitation does not  
18 adequately account for the recommendation Dr. Chew made. The Court again agrees. Because  
19 Dr. Chew recommended plaintiff use an assistive device for short *and* long distances, the ALJ's  
20 determination that plaintiff would not need a cane for distances of less than a city block appears  
21 to conflict with that recommendation. The ALJ also does not mention the need for an assistive  
22 device over uneven terrain. Thus, here too the ALJ erred.

25 II. The ALJ's Evaluation of the Lay Witness Evidence

26 Lay testimony regarding a claimant's symptoms "is competent evidence that an ALJ must

1 take into account,” unless the ALJ “expressly determines to disregard such testimony and gives  
2 reasons germane to each witness for doing so.” *Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001).  
3 In rejecting lay testimony, the ALJ need not cite the specific record as long as “arguably  
4 germane reasons” for dismissing the testimony are noted, even though the ALJ does “not clearly  
5 link his determination to those reasons,” and substantial evidence supports the ALJ’s decision.  
6 *Id.* at 512. The ALJ also may “draw inferences logically flowing from the evidence.” *Sample*,  
7 694 F.2d at 642.  
8

9 The record contains lay witness statements from plaintiff’s landlady and plaintiff’s wife,  
10 which the ALJ addressed as follows:

11 The claimant’s landlady, Linda Lunsford, completed a third party function  
12 report on August 4, 2004 (3E). Ms. Lunsford stated that the claimant could lift  
13 and carry up to 20 pounds and walk up to 100 feet (3E/6). She also stated that  
14 the claimant’s ability to pay attention appeared normal and he had sufficient  
15 concentration to drive, shop, and attend church services (3E/4-5). Ms.  
16 Lunsford stated that the claimant had no problems using his hands and  
observed that he was able to mow the yard with several rest breaks (3E/3, 6).  
Some weight was given to the Ms. Lunsford statements, which show that the  
claimant has rather robust activities of daily living.

17 Cheryl Fontaine, the claimant’s wife, completed a third party function  
18 report on August 6, 2004 (5E). Mrs. Fontaine reported that the claimant woke up  
19 during the night to change positions because of pain and he took naps every  
20 afternoon. Nevertheless, Mrs. Fontaine stated that the claimant was still able  
21 to mow the yard, clean the bathroom, do laundry, make the bed, shop for  
22 groceries, drive a car, and attend church. Mrs. Fontaine also stated that the  
23 claimant could lift up to 20 pounds and had no problems using his hands  
(5E/6). The claimant’s activities seem to support someone who can do  
sedentary to light work. I give some weight to Ms. Fontaine statements. Ms.  
Fontaine further reported that the claimant needs a cane to walk further than  
one walk. The residential functional capacity expressly recognizes that the  
claimant needs a cane to ambulate beyond once [sic] city block.

24 AR 810-11.  
25

26 Plaintiff asserts the ALJ briefly discussed the two lay witnesses’ statements, but did not  
state any reason for rejecting them. While as noted above the ALJ did indicate he was not giving

1 full weight to those statements, the Court agrees the ALJ did not offer a sufficient basis for doing  
2 so. For example, as plaintiff points out, Ms. Lunsford reported that he had to lie down and rest in  
3 the afternoon due to back pain, and as noted by the ALJ, she further reported that plaintiff had to  
4 stop several times while mowing the lawn to rest. AR 99, 101. Ms. Lunsford also observed that  
5 plaintiff had to stop and rest several times and lean on his cart while shopping, and that he was  
6 having more difficulty walking. AR 102-03. Such comments hardly indicate an ability to engage  
7 in “rather robust activities of daily living.” AR 811.  
8

9 Likewise, Ms. Fontaine stated that plaintiff lies down and takes a nap every afternoon, ,  
10 that when he cleans or mows the lawn he takes two to three times longer to do so, and that he  
11 takes twice as long to go shopping and has to lean on the cart. AR 121-22. The ALJ did not  
12 include any of these limitations – or those Ms. Lunsford observed – in his assessment of  
13 plaintiff’s RFC, or explain why he excluded them. That failure on the ALJ’s part constitutes  
14 reversible error.  
15

### 16 III. The ALJ’s RFC Assessment

17 The Commissioner employs a five-step “sequential evaluation process” to determine  
18 whether a claimant is disabled. 20 C.F.R. § 416.920. If the claimant is found disabled or not  
19 disabled at any particular step thereof, the disability determination is made at that step, and the  
20 sequential evaluation process ends. *See id.* A claimant’s RFC assessment is used at step four of  
21 the process to determine whether he or she can do his or her past relevant work, and at step five  
22 to determine whether he or she can do other work. SSR 96-8p, 1996 WL 374184 \*2. It is what  
23 the claimant “can still do despite his or her limitations.” *Id.*  
24

25 A claimant’s RFC is the maximum amount of work the claimant is able to perform based  
26 on all of the relevant evidence in the record. *Id.* However, an inability to work must result from



1 the claimant's "physical or mental impairment(s)." *Id.* Thus, the ALJ must consider only those  
 2 limitations and restrictions "attributable to medically determinable impairments." *Id.* In assessing  
 3 a claimant's RFC, the ALJ also is required to discuss why the claimant's "symptom-related  
 4 functional limitations and restrictions can or cannot reasonably be accepted as consistent with the  
 5 medical or other evidence." *Id.* at \*7.

6 The ALJ found plaintiff had the RFC:

7  
 8 **to perform light work . . . except the claimant can lift 20 pounds**  
 9 **occasionally, 10 pounds frequently, stand or walk for 2 hours in an 8-**  
 10 **hour workday, and sit for 6 hours in an 8 hour workday. He can perform**  
 11 **all postural activities at the no greater than occasional level with the**  
 12 **following exceptions: he can never climb ladder [sic], ropes, or scaffolds.**  
 13 **He can climb ramps or stairs no greater than 10% of the day. The**  
 14 **claimant can perform overhead bilateral reaching no greater than**  
 15 **occasionally. He should have no greater than frequent exposure to the**  
 16 **following: extreme cold, excessive wetness, excessive vibration,**  
 17 **operational control of moving machinery, and no unprotected heights.**  
 18 **The claimant needs a cane for ambulation beyond one city block. He is**  
 19 **limited to frequent handling and fingering.**

20 AR 804 (emphasis in the original). But because as discussed above the ALJ erred in evaluating  
 21 the medical and lay witness evidence in the record, the ALJ's RFC assessment cannot be said to  
 22 completely and accurately describe all of plaintiff's functional limitations. Accordingly, the ALJ  
 23 erred here as well.

#### 24 IV. The ALJ's Step Four Determination

25 At step four of the sequential disability evaluation process, the ALJ found plaintiff to be  
 26 capable of performing her past relevant work as a broadcast checker. AR 30. Plaintiff has the  
 burden at step four of showing that she is unable to return to her past relevant work. *Tackett v.*  
*Apfel*, 180 F.3d 1094, 1098-99 (9th Cir. 1999). Based on the above RFC assessment, the ALJ  
 found plaintiff could perform his past relevant work as a computer support specialist and  
 computer instructor. AR 811-12. Again, however, given the ALJ's failure to properly assess

1 plaintiff's RFC, it is far from clear that plaintiff is able to perform his past relevant work, and  
2 thus the ALJ's step four determination cannot be said to be free of error.

3 V. Remand for Further Administrative Proceedings

4 The Court may remand this case "either for additional evidence and findings or to award  
5 benefits." *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996). Generally, when the Court  
6 reverses an ALJ's decision, "the proper course, except in rare circumstances, is to remand to the  
7 agency for additional investigation or explanation." *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th  
8 Cir. 2004) (citations omitted). Thus, it is "the unusual case in which it is clear from the record  
9 that the claimant is unable to perform gainful employment in the national economy," that  
10 "remand for an immediate award of benefits is appropriate." *Id.*

12 Benefits may be awarded where "the record has been fully developed" and "further  
13 administrative proceedings would serve no useful purpose." *Smolen*, 80 F.3d at 1292; *Holohan v.*  
14 *Massanari*, 246 F.3d 1195, 1210 (9th Cir. 2001). Specifically, benefits should be awarded where:

16 (1) the ALJ has failed to provide legally sufficient reasons for rejecting [the  
17 claimant's] evidence, (2) there are no outstanding issues that must be resolved  
18 before a determination of disability can be made, and (3) it is clear from the  
record that the ALJ would be required to find the claimant disabled were such  
evidence credited.

19 *Smolen*, 80 F.3d 1273 at 1292; *McCartey v. Massanari*, 298 F.3d 1072, 1076-77 (9th Cir. 2002).

20 Because issues remain in regard to the medical evidence and lay witness evidence, plaintiff's  
21 RFC, and her ability to perform her past relevant work, remand for further consideration of those  
22 issues is warranted.

24 CONCLUSION

25 Based on the foregoing discussion, the Court finds the ALJ improperly determined  
26 plaintiff to be not disabled. Defendant's decision to deny benefits therefore is REVERSED and

1 this matter is REMANDED for further administrative proceedings.

2 DATED this 2nd day of September, 2016.

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6 Karen L. Strombom  
7 United States Magistrate Judge  
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